



**University of
Zurich**^{UZH}

**Zurich Open Repository and
Archive**

University of Zurich
University Library
Strickhofstrasse 39
CH-8057 Zurich
www.zora.uzh.ch

Year: 2020

**«Toil of the noble world»: Pasquale Stanislao Mancini, Augusto Pierantoni
and the international legal discourse of 19th century Italy**

Fiocchi Malaspina, Elisabetta

Posted at the Zurich Open Repository and Archive, University of Zurich

ZORA URL: <https://doi.org/10.5167/uzh-195649>

Journal Article

Published Version

Originally published at:

Fiocchi Malaspina, Elisabetta (2020). «Toil of the noble world»: Pasquale Stanislao Mancini, Augusto Pierantoni and the international legal discourse of 19th century Italy. *Clio @ Themis*, 18:1-17.



**« Toil of the noble world » :
Pasquale Stanislao Mancini, Augusto Pierantoni and the international
legal discourse of 19th century Italy**

Abstract : The aim of this article is to reconstruct, from a legal historical point of view, the complexity and the meaning of international law in the Italian peninsula during the 19th century. The paper will analyse different entanglements that constituted the core of nineteenth-century Italian international legal discourse. It is structured in four sections, dealing respectively with : 1) the principle of nationality elaborated by Pasquale Stanislao Mancini and its repercussion both on private and public international law ; 2) the return to the historical origins of Italian international law and the role played by comparative constitutional law ; 3) the implementation and translation of particular legal genres, such as the attempts to codify international law ; 4) colonial education, including legal education, through the creation of the *Scuola diplomatico-coloniale* (colonial and diplomatic school).

Keywords : International law, constitutional law, colonial law, Italy, 19th century

Résumé : L'objectif de cet article est de reconstruire, d'un point de vue historico-juridique, la complexité et la signification du droit international dans la péninsule italienne au cours du XIX^e siècle. L'article analysera les différents enchevêtrements qui constituaient le cœur du discours juridique international italien du XIX^e siècle et il est structuré en quatre sections, traitant respectivement de : 1) la déclinaison du principe de la nationalité élaboré par Pasquale Stanislao Mancini, et sa répercussion sur le droit international privé et public ; 2) le retour aux origines historiques du droit international italien et le rôle joué par le droit constitutionnel comparé ; 3) la mise en œuvre et la traduction de genres juridiques particuliers, comme la codification internationale ; 4) l'éducation coloniale, y compris l'éducation juridique, par la création de la *Scuola diplomatico-coloniale* (école coloniale et diplomatique).

Mots-clés : Droit international, droit constitutionnel, droit colonial, Italie, XIX^e siècle

I. *International and national* during the 19th century : an entangled narration

Heidelberg 16. August 1873

Ich rechne darauf, Sie in Gent am 8. Sept. zu treffen. Es ist ein grosses, heiliges Werk, das wir beginnen, des ‚Schweisses der Edlen Welt‘. Weil es gelingt, so werden die Völker es segnen auch die, welche zur Zeit noch mißtrauisch und befangen sind¹.

1. Thus, Johann Caspar Bluntschli, jurist from Zurich, at that time professor in Heidelberg, ended his letter to the Italian jurist and politician Pasquale Stanislao Mancini. The meeting he pre-announced in the letter proved to be decisive for the creation of the *Institut de droit international*. The expression « *Schweisses der Edlen Welt* » metaphorically represented the need for collective scientific action of the « legal conscience of the civilised world » in the international community². The objectives of the *Institut*, of which Pasquale Stanislao Mancini was the first president, included the development of general principles of law and careful, scrupulous work of international codification. The *Institut* worked independently without political constraints or connections, as Francis Lieber had already hoped in a letter to Gustave Rolin-Jaequemyns, referring to : « *une espèce de concile juridico-œcuménique sans pape et sans infailibilité* »³. The effort of uniting in the legal construction of the discipline, as well as in creating common international rules between States, generated a conception that was different from the past, taking into account the bipartite role of jurists within the international community and within their own State.

2. A jurist had to be capable of mediating between divergent and paradoxically opposing requirements that fluctuated « between universalism and nationalism, humanitarian aspirations and colonial impulses, technical, economic and financial challenges, nations and states [...] International law became the product of a historical reflection by an elite of intellectuals that, through an organic relationship with the conscience of civilized nations, translated value into a scientific system »⁴. The nineteenth century was the century of international law *par excellence*. In fact, in the nineteenth century international law formed its precise characteristics and a sophisticated legal discipline began to appear, differing from diplomacy and natural law. The protagonists of this development were the international lawyers. They experienced a radical change in the international panorama that had emerged in the late eighteenth century due to the American and French Revolutions, the collapse of the Napoleonic Empire, the events that led to the Congress of Vienna, and the establishment of a new legal international order⁵. This order had to be rewritten in the mid-nineteenth century as a result of the Crimean war, at the end of which the Ottoman Empire benefited from European public law with the Paris Treaty in 1856⁶.

1 « Heidelberg 16th August 1873 I am counting on it to meet you in Gent on the 8th of September. It is a great holy work that we are beginning, 'the toil of the noble world'. Because it will succeed, the nations will bless it, even those who are still suspicious and biased » (author's translation) : « Letter from J.C. Bluntschli to P.S. Mancini, 16th August 1873 », *Museo Centrale del Risorgimento*, Roma, MCRR, Fondo Mancini, Busta 858-16 (3).

2 L. Nuzzo, *Origini di una scienza : Diritto internazionale e colonialismo nel 19. secolo*, Frankfurt am Main, V. Klostermann, 2012, 133. See also L. Nuzzo, « Disordine politico e ordine giuridico. Iniziative e utopie nel diritto internazionale di fine Ottocento », *Materiali per una storia della cultura giuridica*, 41, 2, 2011, p. 319-338. See also V. Genin, « L'institutionnalisation du droit international comme phénomène transnational (1869-1873). Les réseaux européens de Gustave Rolin-Jaequemyns », *Journal of the History of International Law/ Revue d'histoire du droit international*, 18, 2-3, 2016, p. 181-196, <https://doi.org/10.1163/15718050-12340056>.

3 A. Rolin, *Les origines de l'Institut de droit international, 1873-1923 : Souvenirs d'un témoin*, Bruxelles, Vromant 1923, p. 10.

4 L. Nuzzo, M. Vec, « The Birth of International Law as a Legal Discipline », *Constructing international law : The birth of a discipline*, eds. L. Nuzzo and M. Vec, Frankfurt am Main, 2012, p. IX-XVI, here XII.

5 See R. Cahen, *Friedrich Gentz (1764-1832) : Penseur Post-Lumières et acteur du nouvel ordre européen*, Berlin, Boston, De Gruyter, 2017, <https://doi.org/10.1515/9783110455342> ; B. Graaf, I de Han and B. Vick eds., *Securing Europe after Napoleon : 1815 and the New European Security Culture*, Cambridge, 2019, <https://doi.org/10.1017/9781108597050>.

6 C. Storti, « Empirismo e scienza : il crocevia del diritto internazionale nella prima metà dell'Ottocento », *Constructing international law*, op. cit., p. 51-145, here 51.

3. Indeed, it was during the nineteenth century that the use of international treaties was transformed. Increasingly, they became valuable as genuine instruments for « codification » in order to create common provisions and principles for all States⁷. The focus was primarily on peace treaties and the emergence of « new enforcement means »⁸, as well as on the regulation of the laws of war and on international humanitarian law⁹. The foundation of the International Red Cross in Geneva in 1864 was achieved thanks to a platform that involved States, public opinion, politicians, and legal experts¹⁰. But in reality these humanitarian developments always had to deal with the paradoxes of the dynamics of international law, subject to the thought patterns of power and politics, inevitably, only scarcely reconcilable with the spirit of peace. The nineteenth century also saw the formation of « the international law of international global society », particularly with the emergence of China and Japan, and consequently the global circulation of theories on international law that were developed in Europe and North America¹¹. Clear examples of this are the first Chinese and Japanese translations of Henry Wheaton's *Elements of International Law*, published in 1836, and contemporaneously with them, the dissemination of translations or reprints of seventeenth – and eighteenth century treatises such as Hugo Grotius' *De iure belli ac pacis* and Emer de Vattel's *Droit des gens*¹². These phenomena had an impact both on the history of publishing and on the history of law, particularly on the mediation and abstraction of legal concepts that enabled their universalization¹³.

4. Furthermore, during the nineteenth century the internationalisation of colonial law also took shape. Throughout a period of intense rivalries in the second part of the 19th century, both in Europe and particularly in the colonial environment, a sort of cooperation and consultation emerged. This period was crucial for the internationalisation of the legal discourse. Models and practices concerning colonial issues were discussed in conferences, congresses, institutions and exhibitions¹⁴. The networks of meetings were

- 7 E. Augusti, « Peace by Code. Milestones and Crossroads in the Codification of International Law », *Paradoxes of peace in nineteenth century Europe*, eds. T. Hippler and M. Vec, Oxford, 2015, p. 37-61, <https://doi.org/10.1093/acprof:oso/9780198727996.003.0003>; S. Mannoni, *Da Vienna a Monaco (1814-1938): Ordine europeo e diritto internazionale*, Torino, Giappichelli, 2014.
- 8 R. Lesaffer, « Peace Treaties and the Formation of International Law », *The Oxford Handbook of the History of International Law*, eds. B. Fassbender and A. Peters, Oxford, 2012, p. 71-94, here 84, <https://doi.org/10.1093/law/9780199599752.003.0004>.
- 9 L. Passero, « Dalle Convenzioni di Ginevra alla “bancarotta” del diritto internazionale. Il rapporto tra il “nuovo” jus in bello otto-novecentesco e la catastrofe della prima guerra civile europea », *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno*, 38/2, 2009, p. 1479-1504; S. Pietropaoli, « Jus ad bellum e ius in bello. La vicenda teorica di una « grande dicotomia » del diritto internazionale », *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno*, op. cit., p. 1169-1214.
- 10 K. Lovrić-Pernak, *Morale internationale und humanität im Völkerrecht des späten 19. Jahrhunderts: Bedeutung und Funktion in Staatenpraxis und Wissenschaft*, Frankfurt am Main, Nomos, 2013; M. E. O'Connell, « Historical Development and Legal Basis », *The Handbook of International Humanitarian Law*, eds. D. Fleck and M. Bothe, Oxford, 2013, p. 101-151, particularly p. 105-125; C. Focarelli, *La persona umana nel diritto internazionale*, Bologna, Il Mulino, 2013. See also C. Focarelli, « Il diritto internazionale umanitario e la Croce Rossa dal 1859 al 1914 », *Storia della Croce Rossa Italiana dalla nascita al 1914. I. Saggi*, eds. C. Cipolla and P. Vanni, Milano, 2013, p. 103-128.
- 11 G. Gozzi, *Diritti e civiltà: Storia e filosofia del diritto internazionale*, Bologna, Il Mulino, 2010, p. 157.
- 12 Concerning the global circulation of Vattel see: J. Pitts, *Boundaries of the International: Law and Empire*, Cambridge, Harvard University Press, 2018, p. 68 ff; E. Fiocchi Malaspina, *L'eterno ritorno del 'Droit des gens' di Emer de Vattel (secc. XVIII-XIX). L'impatto sulla cultura giuridica in prospettiva globale*, Frankfurt am Main, Max Planck Institute for European Legal History, 2017, <http://dx.doi.org/10.12946/gplh8>; concerning the Chinese adaptation of European international law see S. Kroll, *Normgenese durch Re-Interpretation: China und das europäische Völkerrecht im 19. und 20. Jahrhundert*, Göttingen, Nomos, 2012; L.H. Liu, « Legislating the Universal: the Circulation of International Law in the Nineteenth Century », *Tokens of exchange: The problem of translation in global circulations*, ed. L.H. Liu, Durham, Duke University Press, 1999, p. 127-164; L.H. Liu, *The clash of empires: The invention of China in modern world making*, Cambridge, Harvard University Press, 2004; R. Svarverud, *International Law as World Order in Late Imperial China: Translation, Reception and Discourse, 1847-1911*, Leiden, Brill, 2007.
- 13 C. Hill, « Conceptual Universalization in the Transnational Nineteenth Century », *Global Intellectual History*, eds. S. Moyn and A. Sartori, New York, 2013, p. 135, <https://doi.org/10.7312/moyni6048>. See also A. Becker Lorca, « Universal International Law: Nineteenth-Century. Histories of imposition and Appropriation », *Harvard International Law Journal*, 51, 2010, p. 486-503; A. Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842-1933*, Cambridge, Cambridge University Press, 2015, <https://doi.org/10.1017/CBO9781139015424>.
- 14 U. Lindner, « New Forms of Knowledge Exchange Between Imperial Powers: the Development of the Institut Colonial International (ICI) since the End of the Nineteenth Century », *Imperial Cooperation and Transfer 1870-1930. Empires and*

recently described as « knots in what together constituted a worldwide web »¹⁵. The centre of attention was on the possibility of establishing a common international dialogue regarding some specific aspects of law favouring entanglements between the national and international spheres, engaging intensively with the « *esprit de l'internationalité* »¹⁶. In this context the *Institut Colonial International* was founded in Brussels in 1894 and its members came from all over the world. The aim of the *Institut* was to engage and promote transnational exchanges between scholars, politicians, colonial administrators and experts, concerning for example the regulation of labour, tropical hygiene, acclimatisation of Europeans to colonial environments, colonial monetary matters, land law and land registration systems¹⁷.

5. This incessant growth of the transnational dialogue was favoured by the emergence of the national legal language, which was both complementary to the international language and its founding element. In the nineteenth century, in fact, the idea of nation became strong and reached its *acme* as the liberal spirit continued to blow like a wind through Europe and across the Atlantic, translating and forming itself into many different political, legal, social, economic and scientific realities. The construction of national identities was marked by revolutionary movements, spreading rapidly as they drew a new geopolitical map of the world with different borders and new States that in turn identified themselves in their own constituting charters. Thus, the delimitation of borders and territorial independence coincided in the nineteenth century with the affirmation of the so-called principle of nationality and the principle of non-intervention, developed and perfected by jurists. But simultaneously they were also engaged in the legal construction of the colonial discourse and in the legitimisation of European expansion, which was becoming almost a constituent element of most European states.

6. The aim of this article is to reconstruct, from a legal historical point of view, the complexity and the meaning of international law in the 19th-century Italian peninsula. During this period, Italian professors of international law were entrusted with the delicate political and legal task of defining Italy's role in its relations with other States.¹⁸ They had to act as mediators within the complicated international relations of that time and were called to outline the Italian position on the development of public and private international law. Pasquale Stanislao Mancini and Augusto Pierantoni are two significant examples of Italian international lawyers, who were not only decisive for the creation of the discipline of international law in the national context, but were also among the founding members of the *Institut de droit international*. Above all, they grasped that the international discourse would serve as a mirror for Italian national politics.

Encounters, eds. V. Barth and R. Cvetkovski, London, 2015, p. 57-58.

15 See for example: A.C.T. Geppert, *Fleeting Cities: Imperial Expositions in fin-de-Siècle Europe*, New York, Palgrave Macmillan, 2010, p. 3, in which the author showed through a transnational approach how expositions favoured the 'international' exchanges between nations at the end of the 19th century.

16 M. Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*, Cambridge, Cambridge University Press, 2001, p. 92 ff; M. Koskeniemi and V. Kari, « A More Elevated Patriotism: The Emergence of International and Comparative Law (Nineteenth Century) », in *Oxford Handbook of European Legal History*, eds. H. Pihlajamäki, M. D. Dubber and M. Godfrey, Oxford, 2018, p. 974-999, <https://doi.org/10.1093/oxfordhb/9780198785521.013.43>; see also P. Bourdieu, « Les conditions sociales de la circulation internationale des idées », *Romanistische Zeitschrift für Literaturgeschichte/Cahiers d'Histoire des Littérature Romanes*, 14/1-2, 1990, p. 1-10. For the strategies of the internationalisation Singaravelou wrote that « *L'histoire des relations internationales et a fortiori celle de l'internationalisation ne se réduisent pas au récit des grandes rencontres diplomatiques et aux relations entre les acteurs étatiques; elle est aussi faite du « travail continu d'interconnexion » effectué par ces nouvelles institutions transnationales fondées de manière privée par des individus ou des groupes dès la seconde moitié du XIX^e siècle* »: P. Singaravelou, « Les stratégies d'internationalisation de la question coloniale et la construction transnationale d'une science de la colonisation à la fin du XIX^e siècle », *Monde(s)*, 1/1, 2012, p. 135-157, here 135, <https://doi.org/10.3917/mond.121.0135>

17 Concerning the *Institut Colonial International* see: J. Henning Böttger, « Internationalismus und Kolonialismus: Ein Werkstattbericht zur Geschichte des Brüsseler 'Institut Colonial International' (1894-1948) », *Jahrbuch für europäische Überseegeschichte*, 6, 2006, p. 165-172; J. Henning Böttger, « Bienvenue dans la capitale de l'Empire! Die Tagung des Institut Colonial International in Berlin (1897) », *Macht und Anteil an der Weltherrschaft: Berlin und der deutsche Kolonialismus*, eds. U. van der Heyden and J. Zeller, Münster, 2005, p. 109-115.

18 See the recent book edited by G. Bartolini titled *A History of International Law in Italy*, Oxford, 2020, particularly the chapters: W. Rech, « International Law as a Political Language, 1600-1859 », p. 48-78; E. Greppi, « The Risorgimento and the "Birth" of International Law in Italy », p. 79-108.

7. The paper will analyse different entanglements that constituted the core of nineteenth-century Italian international legal discourse. It is structured in four sections dealing respectively with : 1) the principle of nationality elaborated by Pasquale Stanislao Mancini and its repercussion both on private and public international law ; 2) the return to the historical origins of Italian international law and the role played by comparative constitutional law ; 3) the implementation and translation of particular legal genres, such as the attempts to codify international law ; 4) colonial education, including legal education, through the creation of the *Scuola diplomatico-coloniale* (colonial and diplomatic school).

II. The principle of nationality between public and private international law

8. The universities were the chosen place where the international legal discourse took shape. There is no doubt that, on the Italian peninsula and in the history of European law, international law took a very particular path of development as a discipline. The first professorship in international law in Europe was established at the University of Turin in 1851, entrusted to the famous jurist, politician, and several times Minister, Pasquale Stanislao Mancini (1817-1888)¹⁹. On 22nd January 1851 Mancini inaugurated his course at the University of Turin with his opening lecture *Della nazionalità come fondamento del diritto delle genti*. This had great influence all over Europe, to the extent that it was considered political propaganda for the *Risorgimento*'s legal doctrine²⁰, but it also represented a significant stage in the construction of international law²¹. Pasquale Stanislao Mancini and later Augusto Pierantoni served as role models of international law professors during Italian unification and by studying their writings it has been possible to underline the relationship between the birth of this new discipline and Italian political events. Mancini and Pierantoni were products of their time. They were personally involved in the *Risorgimento* and in the creation of a new State.

9. In those years the spirit of the *Risorgimento* was felt at all levels in Italy. The *Risorgimento* was rooted, in fact, not so much in patriotic insurrection and political reform, as in its legal claims. Its subject was not the artificial person of the State, but the nature of the nation²². In this sense, the foundation of the Italian school of international law coincided with the establishment of the first European chair of international law and with the proclamation, made by Pasquale Stanislao Mancini, of the principle of nationality²³. As Luigi Nuzzo well underlined, the Italian doctrine of international law was inevitably characterised by historical and political events leading to national unification. For this reason, international law in Italy was shaped on two levels : the pedagogical one, based on the nation as a significant cultural system, well

19 Pasquale Stanislao Mancini graduated in Law at the University of Naples in 1835. Due to his participation in the revolutionary movements of 1848 he fled to Turin. He was a member of the national parliament from 1860 and sided with the democratic left. In 1876 he was appointed Minister of Justice by the Prime Minister Agostino Depretis and later, in 1881, he became Minister of Foreign Affairs. During the same year he also became president of the *Enciclopedia Giuridica Italiana* (Italian legal encyclopaedia) : E. Mura, *Mancini in cattedra : Le lezioni torinesi di diritto internazionale del 1850-51 e 1851-52*, Pisa, ETS, 2018, p. 9-86 ; Ead., *All'ombra di Mancini : La disciplina internazionalistica in Italia ai suoi albori*, Pisa, ETS, 2017 ; C. Storti, « Mancini Pasquale Stanislao », *Dizionario biografico dei giuristi italiani : (XII - XX secolo)*, eds. I. Birocchi, E. Cortese, A. Mattone and M.N. Miletto, vol. II, Bologna, Il Mulino, 2013, p. 1244-1248 ; L. Nuzzo, « Mancini, Pasquale Stanislao », *Enciclopedia italiana di scienze lettere ed arti. Il contributo italiano alla storia del pensiero. Ottava appendice. Diritto*, Roma, Treccani, 2012, p. 307-310 ; F. Mele, *Un codice unico per un'Italia nuova. Il progetto di codice penale di Pasquale Stanislao Mancini*, Roma, Carocci, 2002.

20 G.S. Pene Vidari, « Un secolo e mezzo fa (22 gennaio 1851) : la lezione torinese di Pasquale Stanislao Mancini sulla nazionalità », *Studi Piemontesi*, 31/2, 2002, p. 273-274.

21 Id., « La prolusione di Pasquale Stanislao Mancini sul principio di nazionalità », *Retoriche dei giuristi e costituzione dell'identità nazionale*, ed. G. Cazzetta, Bologna, 2013, p. 117-134, here 118. Also, F. Ieva, « The chair of International Law and Pasquale Stanislao Mancini's Lectures from Turin », eds. E. Flocchi Malaspina and G. Silvestrini, *Natural Law and Law of Nations in the 18th century Italian Peninsula*, forthcoming.

22 A. Droetto, *Pasquale Stanislao Mancini e la scuola italiana di diritto internazionale del secolo XIX*, Milano, Giuffrè 1954, p. 2.

23 *Ibidem*.

symbolised by Giuseppe Mazzini and his *Giovine Italia*, and the performative one, interpreted as a disciplined form of government²⁴. Mancini's theory of nationality was positioned as an alternative theory to naturalistic law approaches and positivistic legal demands, departing from the mainly prevailing theoretical orientation with the State as the sole subject of international law. Instead, he considered individuals as the only true subjects of international law, thereby anticipating many twentieth-century doctrines²⁵.

10. Mancini conceived the nation as a natural society of men whose premise was to share the same territory, the same origin, the same traditions and the same language :

Il complesso di codesti elementi compone, a dir vero, la propria natura di ciascun popolo per sé distinto, ed induce tra i membri del nazionale consorzio cotal particolare intimità dei rapporti e materiali e morali, che per legittimo effetto ne viene ancora tra essi creata una più intima comunanza di diritto, impossibile ad esistere tra individui di nazioni diverse²⁶.

11. All of these historical, cultural and natural elements, developed and explained by Mancini, were presented through an analytical discourse as the foundation of every nation. However, these elements alone were not sufficient to create a nation, because they needed to be supported by another element, essential and spiritual in nature : the awareness of belonging to an identical human aggregation having a common destiny²⁷. Mancini described the principle of nationality thus :

Signori esso è la coscienza della nazionalità, il sentimento che ella acquista di sé medesima e che la rende capace di costituirsi al di dentro e di manifestarsi al di fuori. Moltiplicate quanto volete i punti di contatto materiale ed esteriore in mezzo ad una aggregazione di uomini : questi non formeranno mai una nazione senza la unità morale di un pensiero comune, di una idea predominante che fa una società quel ch'essa è, perché in essa viene realizzata. [...] Essa è il 'Penso dunque esisto' dei filosofi, applicato alla nazionalità²⁸.

12. Furthermore, on the international level the rights of freedom of every nation must be observed by other nations, according to the same principles that relate to individuals, in order to recognize the free and harmonious co-existence of all nations²⁹. If on the one hand « the preservation and development of nationality » constitutes « for men not only a right, but a legal duty »³⁰, then on the other hand « in the genesis of international rights, the *Nation* and not the *State* » should represent « the elementary unit, the rational monad of science »³¹. For Mancini, the principle of nationality gained relevance for both public and private international law. The criterion for the applicability of public international law was the existence of the State, legitimised by the existence of a nation, whereas, in private international law, nationality was the connecting criterion that was decisive in order for the law to be applicable³².

24 L. Nuzzo, *Origini di una scienza, op. cit.*, p. 87 ; L. Nuzzo, « Da Mazzini a Mancini. Il principio di nazionalità tra politica e diritto », *Giornale di storia costituzionale*, 14/2, 2007, p. 161-186.

25 E. Jayme, *Pasquale Stanislao Mancini : Il diritto internazionale privato tra Risorgimento e attività forense*, Padova, CEDAM, 1988, p. 8.

26 « The complex of these elements, in fact, compounds the very nature of each separate population, and causes among the members of the national consortium, a particularly intimacy in both material and moral relations, whose effect is to create among them a more intimate commonality of law, which could not possibly exist between individuals of different nations » (author's translation) : P.S. Mancini, *Della nazionalità come fondamento del diritto delle genti prelezione al corso di diritto internazionale e marittimo pronunciata nella R. Università di Torino*, Torino, Tipografia Eredi Botta, 1851, p. 37-38.

27 *Ibidem*, p. 43.

28 « Gentlemen, it is the consciousness of nationality, the feeling that it acquires of itself, which gives it the ability to be formed on the inside, and be shown on the outside. Multiply as much as you want the material and exterior contact points within a group of men : they will never create a nation without the moral unity of a common thought, of a prevailing idea that makes a society what it is [...] It is the philosophers 'I think therefore I exist' applied to nationality' » (author's translation) : *ibid.*, p. 43-44.

29 G.S. Pene Vidari, « La prolusione di Pasquale Stanislao Mancini sul principio di nazionalità », art. cit., p. 126.

30 P.S. Mancini, *Della nazionalità come fondamento del diritto delle genti, op. cit.*, p. 41.

31 *Ibidem*, p. 46-47.

32 E. Mongiano, « Pasquale Stanislao Mancini. Nazionalità e diritto internazionale all'Università di Torino », *Rivista italiana per le scienze giuridiche*, 4, 2013, p. 363-377, here 373 ; See also : Ead., « Il principio di nazionalità nella formazione

13. Mancini was the forerunner and theorist of fundamental principles of private international law that were incorporated into several national and international legislations. He made a distinction between necessary and voluntary private law, as opposed to the criterion of domicile that had hitherto been applied. Necessary private law related to the sphere of family law, such as marriage and adoption, personal rights and inheritance law, and was determined in accordance with the principle of nationality. Voluntary private law, on the other hand, was regulated in accordance with the principle of freedom and governed obligations, in which the parties were permitted to choose the applicable law³³. Outside private law the principle of sovereignty applied: foreigners and citizens were subject to the same rules of national law whilst at the same time the foreigner enjoyed the same rights as those attributed to citizens³⁴.

14. Mancini succeeded in translating his theories into law when he played a significant role in drafting the first Italian Civil Code, promulgated in 1865. Articles 6 to 12 of the preliminary provisions of the Code crystallised the principle of nationality. The principles of freedom and sovereignty were to be linked to Article 3 of the first book of the Civil Code, which laid down that the foreigner was entitled to the same civil rights as those enjoyed by citizens³⁵. Also at international level, he campaigned for the unification of international private law through multilateral agreements. After he became president of the *Institut de droit international*, he emphasised that there was a need to « rendre obligatoires pour tous les États, sous la forme d'un ou de plusieurs traités internationaux, un certain nombre de règles générales du Droit international privé pour assurer la décision uniforme entre les différentes législations civiles et criminelles »³⁶. Mancini's efforts were welcomed by the whole international community and in 1893, although he had already died, a decisive turning point in private international law came with the Hague Conference on Private International Law, strongly promoted by the Dutch jurist Tobias Asser³⁷.

15. The intense debate about the relation of public and private international law, which were both able to coexist in Mancini's thinking, now took two different directions: from having been a moral and ideal value in the process of political unification, the principle of nationality in the sphere of public international law became a legal concept, whilst the principle of nationality in the sphere of private law became the instrument of dialogue between nations in respect of their mutual obligations, in the search for harmonised solutions in private international law, and in the adoption of uniform rules as being in the interest of each State. The principle of sovereign equality of all States was recognised after Mancini's death and the legislation on private international law was created with the characteristics of being neutral and bilateral³⁸.

dello stato unitario italiano: il contributo di Pasquale Stanislao Mancini », *Revista europea de historia de las ideas políticas y de las instituciones públicas*, 6, 2013, p. 85-97.

33 S. Tonolo, « L'Italia e il resto del mondo nel pensiero di Pasquale Stanislao Mancini », *Cuadernos de Derecho Transnacional*, 3/2, 2011, p. 178-192, here 180, <https://e-revistas.uc3m.es/index.php/CDT/article/view/1331>, accessed on 14th April 2020.

34 Y. Nishitani, « Mancini e l'autonomia della volontà nel diritto internazionale privato », *Rivista di diritto internazionale privato e processuale*, 37, 2001, p. 23-44. See also: E. Jayme, *Internationales Privatrecht: Ideengeschichte von Mancini und Ehrenzweig zum Europäischen Kollisionsrecht*, Heidelberg, Müller, 2009. Also: G. D'Amelio, « Pasquale Stanislao Mancini e l'unificazione legislativa nel 1859-1861 », *Annali di storia del diritto*, 5-6, 1961-1962, p. 159-220.

35 S. Tonolo, « L'Italia e il resto del mondo nel pensiero di Pasquale Stanislao Mancini », art. cit., p. 181; E. Mongiano, « Pasquale Stanislao Mancini. Nazionalità e diritto internazionale all'Università di Torino », *op. cit.*, p. 373. See also L. Ferrari Bravo, « Mancini e i diritti dello straniero nell'ordinamento italiano », *Pasquale Stanislao Mancini: l'uomo lo studioso il politico*, eds. O. Zecchino and G. Spadolini, Napoli, 1991, p. 416-437; in the same volume: F. Caruso, « Mancini e i principi del diritto internazionale privato nel codice del 1865 », p. 433-438; C. Storti Storch, *Ricerche sulla condizione giuridica dello straniero in Italia dal tardo diritto comune all'età preunitaria: aspetti civilistici*, Milano, Giuffrè, 1990. On the role played by Mancini in the process of Italian unification concerning civil codification see: S. Solimano, *Il letto di Procuste: diritto e politica nella formazione del Codice civile unitario: i progetti Cassinis, 1860-1861*, Milano, Giuffrè, 2003.

36 P.S. Mancini, « De l'utilité de rendre obligatoire pour tous les États, sous la forme d'un ou de plusieurs traités internationaux, un certain nombre de règles générales de Droit international privé pour assurer la décision uniforme des conflits entre les différentes législations civiles et criminelles (Institut de droit international, session de Genève, Rapport préliminaire) », *Clunet*, 1, 1874, p. 221-239, here 221. See also E. Jayme, « Pasquale Stanislao Mancini (1817-1888) l'attualità del suo pensiero », *Accademia Roveretana degli Agiati: Atti della Accademia Roveretana degli Agiati*, Trento, Calliano, 1989, p. 23-42.

37 *Ibidem*, p. 23 ff.

38 *Ibid.*

III. International law between history and comparative constitutional law

16. The legacy of Mancini was taken up and continued by Augusto Pierantoni (1840-1911). He met Mancini after the Unification of Italy while he was employed in the Ministry of Education in Turin. A few years later, he became Mancini's assistant in the legal profession, he graduated in law from Naples University and started his academic career. After having fought in Garibaldi's *Spedizione dei Mille* in 1860, he obtained the chair of international and constitutional law at Modena University in 1865. In 1866 he served as a soldier in the war against the Austrian Empire. In 1868 he married Mancini's eldest daughter Grazia. Afterwards, in 1870 Pierantoni became professor of constitutional law at Naples University and in 1878 succeeded Mancini to the chair of international law at the University of Rome. Then, in 1874 Pierantoni was elected to Parliament and served as a deputy of the historical Left wing. After being re-elected in 1876 and in 1880, he was appointed as Senator in 1883³⁹. Pierantoni was an extremely assiduous participant in Parliament: he was engaged in numerous special committees and commissions and distinguished himself with his political attitude, passion and with the care he put into his activities both as deputy and later as senator.

As he said :

*non appena presi ad esercitare l'ufficio arduo e delicato di legislatore, mi appalesai propugnatore di quelle riforme internazionali, che trovavano un'eco vivissima nel cuore della nazione, e tenacemente prestai omaggio ai principi, che la coscienza giuridica de' popoli professava*⁴⁰.

17. Among the many proposals he brought forward, that of 30th May 1876 was considered the most important: Pierantoni suggested a revision of the military penal code by proposing the alignment of the provisions concerning the treatment of prisoners with the Geneva Convention of 1864 and the regulations of the Brussels Conference of 1874. He argued that « *la scienza e il mondo civile si allieterebbero dell'opera di umanità da me raccomandata e [...] la patria nostra acquisterebbe nuovi titoli alla riconoscenza generale* »⁴¹. The Chamber of Deputies unanimously approved his proposal, which led to the revision of the Italian military code in order to conform with international law. In his academic career, while teaching at Modena University he wrote several important textbooks, the first of which, *Il progresso del diritto pubblico e delle genti*, was published in 1866 and was divided in two parts: the first part aimed to analyse the scientific value of the principle of nationality, focusing on the political perspective; the second focused on a study of Italy, reconstructing its history and its role in international relations⁴².

18. The second textbook, *Storia degli Studi del diritto internazionale in Italia*, published in 1869, analysed the development of international law as an academic discipline in Italy. In this book Pierantoni showed the progress in the history of the law of nations in Italy, identifying five epochs. The first epoch coincided both with the exposition of the theories of Pierino Belli and Alberico Gentili and the reconstruction of the historical-political situation of the Italian peninsula. Mancini rediscovered the jurist Pierino Belli from Alba and referred in his inaugural lecture to Belli's *De re militari et bello tractatus* written in 1583. Mancini

39 For the biography of Pierantoni see: E. Mura, *All'ombra di Mancini*, op. cit., p. 151-199; L. Passero, « Pierantoni Augusto », in *Dizionario biografico dei giuristi italiani: (XII - XX secolo)*, op. cit., p. 1576; E. Focchi Malaspina, « Pierantoni Augusto », in *Dizionario del Liberalismo Italiano*, vol. II, Rubbettino, Soveria Mannelli, 2015, pp. 890-891.

40 « as soon as I began to exercise the arduous and delicate office of legislator, I became a supporter of those international reforms, which found resounded strongly in the nation's heart, and I tenaciously paid tribute to the principles professed by legal conscience of the people » (author's translation): A. Pierantoni, *La giustizia internazionale e le leggi della guerra* (1899). *Il manifesto della seconda conferenza dell'Aia*, Roma, Manuzio, 1907, p. VII.

41 « science and the civil world would find joy in the works of humanity that I recommended and [...] our country would acquire general accreditation » (author's translation): *Ibidem*.

42 A. Pierantoni, *Il progresso del diritto pubblico e delle genti: introduzione allo studio del diritto costituzionale ed internazionale*, Roma, Manuzio, 1866. This book received the admiration also from Giuseppe Garibaldi, who wrote, in

called Belli's work « *il primo trattato giuridico sulla materia del diritto delle genti* » serving as a forerunner of the theories of Gentili and subsequently of Grotius⁴³.

19. In writing about the second period, Pierantoni concentrated above all on the eighteenth century providing an overview of the various theories of the law of nations in Europe, including Wolff and Vattel, before he moved into the Italian context. He illustrated the disciplinary controversy of 1782-1788 between Ferdinando Galiani and Giovanni Lampredi about the limits of neutral trade and analysed both *Dei doveri e dei diritti dei principi neutrali verso i guerreggianti* and *Del commercio dei popoli neutrali in tempo di guerra*. This second period ended with Domenico Antonio Azuni and his *Sistema universale dei principi del diritto marittimo in Italia*, which was a fundamental work for the history of Italian maritime law. In the third period Pierantoni dealt with critical observations about Italian international law in the first half of the nineteenth century, taking into account precise historical events, such as the fall of Napoleon, the Congress of Vienna, and the positions of Pellegrino Rossi and Gian Domenico Romagnosi. The fourth period focused on the figure of his father-in-law Mancini and the establishment of the first chair of International Law in Turin. However, Pierantoni also dedicated some pages to the thoughts and works of Terenzio Mamiani and Ludovico Casanova. Finally, in the fifth and last period, he wrote about the internationalists of the second half of the nineteenth century where we find Pasquale Fiore and Giuseppe Carnazza Amari. In the *Prefazione* he emphasised

*noi italiani avevamo smarrita la coscienza di noi medesimi, e se ora come nazione abbiamo recuperato l'avito posto nel consorzio delle genti ed assicurato un grado di potenza politica, abbiamo tuttora il grave compito di accoppiare a questa unità politica l'altra civile della sapienza nazionale [...] L'acquisto della patria indipendenza non deve essere guardato come il fine massimo e la meta del nostro politico rinnovamento, ma come il mezzo connaturale e proprio di emancipare l'ingegno natio dalla soprastante potenza straniera in ogni ordine di umana attività*⁴⁴.

20. Pierantoni's intention was to situate Italy in the international setting, identifying its history by means of the voices and the work of the jurists and their resonance through the centuries. Whilst, on the one hand, the principle of nationality played a decisive role in understanding the constituting factors of a nation, on the other hand, history – the history of international law – could also favour national identity in a territory like Italy, which until the mid-nineteenth century had still been divided up into small States, each with its own political and social realities. In fact, as Liliana Obregon has highlighted « Historical writing was essential to the project of ordering a new nation and placing it in the growing cosmopolitan and commercial world through the new discipline of international law »⁴⁵.

21. The reconstruction of the Italian history of the law of nations and the history of international law allowed Italy to relate itself to other States and, as in other European States, in Italy, too, there was a historical, cultural and scientific tradition concerning international law. Constitutional law, which Pierantoni developed by constitutional comparison, is also closely linked to the history of international

April 1867, this letter to Pierantoni : « Grazie per l'opera vostra bellissima che ho cominciato a leggere con tanto interesse. A voi milite dell'intelligenza e del braccio tocca il propugnare i diritti dell'umanità di emancipare l'Italia dall'impostura pretina che la travaglia » : Augusto Pierantoni nell'anno XL dell'insegnamento universitario. Omaggio di amici e ammiratori. XX maggio 1906, Roma, Manuzio, 1906, p. 9.

43 « the first legal treatise on the subject of the law of nations » (author's translation) : P.S. Mancini, *Della nazionalità come fondamento del diritto delle genti*, op. cit., p. 16-17. G.S. Pene Vidari, « Un giurista umanitario nelle guerre europee del Cinquecento : l'abate Pietrino Belli », *Studi Piemontesi*, 35/2, 2006, p. 399-404.

44 « We Italians had lost the consciousness of ourselves, and if at this moment as a Nation we have recovered the ancestral place in the consortium of peoples and ensured a degree of political power, we still have the serious task of linking this political unity to the other civil unity of national wisdom [...] The acquisition of independence should not be seen as the ultimate end and the goal of our political renewal, but as our own natural means of emancipating our native mind from the domination of foreign powers in every type of human activity » (author's translation) : A. Pierantoni, *Storia degli studi del diritto internazionale in Italia*, Modena, Vincenzi, 1869, p. III-IV.

45 L. Obregón Tarazona, « Challenging the Boundaries of 1815 : Augusto Pierantoni's (1840-1911) Histories of International Law from the Italian Risorgimento », forthcoming ; See also : L. Obregón Tarazona, « Writing International Legal History : An Overview », *Monde(s)*, 7/1, 2015, p. 95-112, <https://doi.org/10.3917/mondi.151.0095>.

law. From another viewpoint, this demonstrates the openness for international exchange of views and the tension in relation to national identity. In order to understand the reasons for Pierantoni's interest in constitutional law it must be emphasised that between the nineteenth and twentieth centuries, constitutional law was taught along with international law⁴⁶. So, no clear separation was made between the two disciplines. Instead, a space for comparative legal analysis was created integrating the two disciplines. In 1873 Pierantoni published his two-volume *Trattato di diritto costituzionale* in which he analysed the legal order of the State, its characteristics, its powers and its sources, providing not only historical digressions but also comparisons between different systems. He was convinced that « *la cognizione delle formule degli ordinamenti stranieri [...] è utile, quando serve alla correzione delle nostre* »⁴⁷. Making comparisons meant beginning from the « *differenza delle istituzioni [...] procedere allo studio comparativo, che produce una feconda comunione di idee e di verità e permette riforme utili, non imitazioni servili, consone col momento storico di un paese e con le sue condizioni economiche* »⁴⁸.

22. For Pierantoni the focus in the dialogue between jurists, who in this case also act as mediators, lay on particular institutions that were able not only to passively reproduce a model but could adapt it to their own characteristics. The need for a comparative approach was favoured by a reduction of the distances between countries which, in turn, had stimulated « international » comparison on various topics. Already halfway through the nineteenth century Pierantoni was maintaining that

*L'utilità oggi generalmente sentita dello studio comparato dipende dalla rinnovata coscienza umana, dalla diffusione delle idee di fraternità e di umanità, dalle grandi invenzioni della industria, delle banche, del commercio, del vapore, dell'elettricità, le quali identificando interessi e sopprimendo le distanze hanno chiamato i popoli a questo comune lavoro di riflessione [...] con la reciproca ponderazione degli istituti*⁴⁹.

23. A copy of his *Trattato di diritto costituzionale* was sent directly to Bluntschli, who was also in frequent contact with Mancini. On issues of both international law and public law, Bluntschli and the Italians found themselves in agreement. During the same period, Bluntschli was working on re-editions of his *Allgemeine Staatslehre* (1851), in which he described the nation-state as « *ein Produkt der menschlichen Thätigkeit und seine organische Erscheinung eine Nachbildung des natürlichen Organismus* »⁵⁰. Two months after the meeting in Ghent in September 1873, Bluntschli responded to Pierantoni, not only thanking him but also incentivising and suggesting a number of considerations on the German and Italian constitutional systems, on the principle of nationality, and stating how close, from a scientific point of view, were their two schools of thought, compared with other European situations

Auch in ihrem Buch habe ich mit Befriedigung bemerkt, dass die italienische und die deutsche Methode der wissenschaftlichen Prüfung nahe verwandt sind. Leider wissen sie von einander noch zu wenig, aber sowohl Deutsche als Italiener sind zu der Einsicht gelangt, dass die blosse Erfahrungsmethode der Engländer und die speculative Methode der Franzosen nicht genügen, sondern zugleich eine geschichtliche und philosophische Betrachtung nötig ist,

46 P. Fois, « L'insegnamento del diritto internazionale in Italia durante il Novecento », *Rivista di diritto internazionale privato e processuale*, 28, 1992, p. 17-28.

47 « knowledge of the formulas of foreign law [...] is useful when it serves to correct our own » (author's translation) : A. Pierantoni, *Trattato di diritto costituzionale*, Napoli, Marghieri, 1873, p. 14.

48 « the difference between the institutions [...] and then proceeding to their comparative study, which produces a fruitful communion of ideas and truths and enables useful reforms, not servile imitations, that align with the historical moment of a country and its economic conditions » (author's translation) : *Ibidem*.

49 « the generally felt usefulness of comparative study depends today on the renewed human awareness, on the diffusion of ideas of fraternity and humanity, and on the great inventions of industry, the banks, commerce, steam, and electricity, which by identifying interests and suppressing distances have called the peoples to this shared work of reflection [...] together with a reciprocal pondering of their institutions » (author's translation) : *ibid.*, p. 62. See also : L. Borsi, *Storia, nazione, costituzione : Palma e i preorlandiani*, Milano, Giuffrè, 2007, p. 322.

50 « a product of human activity, and its organism is a copy of a natural organism » (author's translation) : J.C. Bluntschli, *Lehre vom modernen Staat : Allgemeine Staatslehre*, vol. I, München, J.G. Cotta, 1886, p. 18.

*eine Wahrheit, die freilich schon Baco von Verulam ausgesprochen und viel früher noch Aristoteles wohl beobachtet hat*⁵¹.

24. With the expression « *Leider wissen sie von einander noch zu wenig* », Bluntschli was calling for an even stronger scientific dialogue between the two schools in the field of public law, a call that was taken up by his friend Pierantoni. In fact Pierantoni took part in creating the *Fondation Bluntschli pour le droit public général et du droit international*, which was dedicated to Bluntschli after his death in 1881. Between January and March 1882, the manifesto of the *Fondation* was signed by numerous lawyers, among them Carlos Calvo, Theodore Woolsey and Gustave Rolin-Jaequemyns. Its objectives included « *étendre le champ des études de droit public au-delà des limites nationales, et encourager [...] les travaux [...] de tous pays, dans le domaine du droit public général (comparé) et du droit international* »⁵².

IV. International law : translations and attempts at codification

25. The historical reconstruction of international law and the comparative approach to constitutional law were the instruments by means of which Italy entered the international discourse, creating its own space. But the language and genres of the *international* were also revealed through translation. An important example was the Italian translation in 1874 of *Draft Outlines of an International Code* by American lawyer David Dudley Field. Along with James Miles, Field was one of the co-founders of the *International Code Committee* in New York, which had organised an international conference for the reform and codification of the law of nations in Brussels on 28th October 1873, which Mancini, Bluntschli, Calvo and Asser attended as delegates of the *Institut*⁵³. In his introductory essay to the translation of the code, Pierantoni himself narrates a brief history of international law in Europe, underlining the creation of the *Institut de droit international* in Ghent and accompanying his account with documents, such as the correspondence between the members, the statute, and the objectives of the *International Code Committee*⁵⁴.

26. Describing the attempts at codification of international law, Pierantoni retraced the Italian contribution, pointing out that in 1851, the year in which Mancini delivered his introductory lecture in Turin, Augusto Paroldo in Genoa had published his *Saggio di Codificazione del diritto internazionale*, which did not codify public international law but developed 555 articles divided into three volumes dealing with people, goods and property, trade and navigation⁵⁵. According to Pierantoni, Paroldo's *Saggio* had anticipated the *Draft Outlines of an International Code* published by Field in 1872⁵⁶. Since the translation aspect played an important role in the process of assimilation of a work, and because of the

⁵¹ « With pleasure I recognized in your book that the Italian and the German method are closely related in the scientific examination. Unfortunately, they still don't know not much of each other, but the Germans and the Italians have come to the understanding, that the mere 'method of experience' of the English scholars and the speculative method of the French does not suffice. Rather relevant are the historical and philosophical examination, a truth which was formulated already by Baco von Verulam and much earlier has been examined by Aristoteles » (author's translation): « Letter from J.C. Bluntschli to A. Pierantoni, 5th November 1873 », *Museo Centrale del Risorgimento*, Roma, MCRR, Fondo Pierantoni, Busta 984-11.

⁵² « Fondation Bluntschli pour le droit public général et du droit international », *Museo Centrale del Risorgimento*, Roma, MCRR, Fondo Pierantoni, Busta 868-8(8).

⁵³ L. Lacché, « 'Celebrato come una gloria nazionale': Pietro Sbarbaro e il "Risorgimento" di Alberico Gentili », *Alberico Gentili: (San Ginesio 1552-Londra 1608): atti dei convegni nel quarto centenario della morte. San Ginesio, 11-12-13 settembre 2008, Oxford e Londra, 5-6 giugno 2008, Napoli L'Orientale, 6 novembre 2007*, Milano, Giuffrè, 2010, p. 189-295, here 236.

⁵⁴ See: L. Nuzzo, « Spatial and Temporal Dimensions of Legal History. International Law, Foreign Policy, and the Construction of a Legal Order », *Transformation of foreign policy*, eds. G. Hellmann, A. Fahrmeir and M. Vec, Oxford, 2016, p. 142-164, here 146.

⁵⁵ E. Augusti, « Peace by Code », art. cit., p. 44.

⁵⁶ A. Pierantoni, « La riforma del diritto delle genti e l'Istituto di diritto internazionale di Gand », in *Prime linee di un codice internazionale*, D. Field Dudley, A. Pierantoni (transl.), Napoli, Nicola Jovene 1874, p. 35.

‘newness of the theme’ and the « variety of topics », Pierantoni was acting as mediator for the translation and adoption of « legal concepts and languages coming from the Anglo-Saxon world »⁵⁷.

27. As is well known, an interest in codification was not only among the objectives of the *Institut de droit international* but was also a relevant part of the study and research work of individual lawyers with expertise in international law. For example, Bluntschli, independently from the forum of the *Institut de droit international*, also engaged in intensive study of the relationship between national (local) and international codification. It is interesting to note that for Bluntschli the codification of international law was an application and extension of the method he had used for the civil code of the Canton of Zurich⁵⁸. In 1867 he published *The Modern International Law of Civilized States* (*Das moderne Völkerrecht der civilisierten Staaten*). Bluntschli successfully created a comprehensive codification of international law. His intention was to prove the legal quality of international law by overcoming the perceived conflict between natural law and positive law. Unlike his contemporaries, he did not merely write a commentary on existing treaties and customs. Instead, he presented a comprehensive code that considered the dynamic or « organic » evolution of law and society⁵⁹. The work of another Italian jurist, Pasquale Fiore, can be placed within this lively international academic community, in which he also analysed the specific role of the jurist in society. In 1890 Fiore published his *Il diritto internazionale codificato e la sua sanzione giuridica* (*Codified International Law and its Legal Sanction*). Introducing this work, Fiore wrote that its purpose was :

« to formulate the body of rules which consist in part of those accepted by states in general treaties, in their legislation or in diplomatic documents, and in part of those rules found either in the popular convictions which have manifested themselves in our time, or in the common thought of scholars and the most learned jurists »⁶⁰.

28. In line with the positions of the *Institut de Droit International*, in his work Fiore summarised and illustrated the jurist’s role in society as that of one called not only to devote himself to law, but also to play a key role in the elaboration of principles and rules that go to make up the international order. However, Fiore’s intention was very different from Field’s ; the aim of Fiore was to have a comprehensive treatise concerning the rules of international law. His code was not addressed to governments and or intended to be adopted by them. This aim is underlined in the title of his work : *La Codificazione del Diritto Internazionale* (*Codification of International Law*) and not « Code of International Law »⁶¹. Field, on the other hand, suggested a code that should be accepted by governments. Field’s theoretical approach in his *Draft Outlines of an International Code* was strictly positivist. His *Draft Outlines* was meant as a suggestion and was not to be put forth as a completed code. The word « Draft » in the title illustrated the essence of his work and he explicitly mentioned that revisions were needed and also welcomed⁶².

29. Field’s positivist intention was grasped by Pierantoni, whose translation was published strategically between the foundation of the *Institut de droit international* and the 1875 Brussels Conference on the reform and codification of the law of nations, demonstrating that the need for international codification was closely associated with national assimilation.

On 3rd January 1875, just before the conference, Bluntschli wrote to his friend Pierantoni :

La Conférence sera un bon consentement de la codification du droit des gens générale. Les grands principes de l’humanité et les intérêts de tous les peuples seront mieux défendus et

⁵⁷ *Ibidem*, p. 84.

⁵⁸ « It is substantially the same kind of work as that which I early attempted with success at Zurich upon the narrow field of a little Swiss republic with reference to private law. The principles of that work were now only transferred to the broader field of civilised states in general, and were applied to the moving stream of international relations and legal opinions » : A. Herbert Baxter, *Bluntschli’s Life-Work*, Baltimore, Privately Printed, 1884, p. 26.

⁵⁹ M. Koskenniemi, *The Gentle Civiliser of Nations*, op. cit., p. 42.

⁶⁰ P. Fiore, *International Law Codified and Its Legal Sanction*, New York, Baker, Voorhis and Company, 1918, p. 74-75 ; P. Fiore, *Il diritto internazionale codificato e la sua sanzione giuridica*, Torino, Angelo Trani, 1890.

⁶¹ E. Augusti, « Peace by Code », art. cit., p. 44, p. 57.

⁶² D. Field Dudley, *Draft : Outlines of an International Code*, New York, Baker, Voorhis, 1872, p. I.

*protégés, s'il y aura une loi – même imparfaite mais éclairée et reconnue – qui modère l'abus de la force, qu'on ne peut pas éviter, et civilise la brutalité de la guerre, qu'on fait pas empêcher*⁶³.

30. Pierantoni's translation also gained value because it was published at a decisive moment in the history of Italian law. It coincided with the need for codification as a synonym for the unification of law ; in fact the first Italian civil code, along with the code of civil procedure and the code of commerce, was promulgated in 1865. But so far as criminal matters were concerned, given the wide debate on important issues such as the abolition of the death penalty, the penal code (the so-called Zanardelli Code) was not promulgated until 1889⁶⁴. Pierantoni affirmed that even though the first draft code of international law had been written by an American jurist, it could serve as a stimulus for Italians to make a decisive Italian contribution to the discipline⁶⁵.

V. International law and colonial legal education : the so-called *Scuola diplomatico-coloniale*

31. In this last section the aim is to understand how Italian jurists became involved in the process of internationalising the colonial question at the turn of the twentieth century, with particular regard to colonial education and training. After unification, Italy immediately addressed the topic of colonialism. The internationalists provided a legal foundation for Italian expansion and made themselves spokesmen for Italian participation in the colonial conquest, as Mancini accurately said : Italy should not « *chiudere gli occhi a questa gara generosa, che ormai si manifesta tra tutte le grandi nazioni di Europa* »⁶⁶.

32. The term « *gara* » (« contest ») delimits and clarifies the colonial mechanisms that had been set off, above all in a newly constituted State like Italy, which had to compete with the other European states to have a colonial possession and assert itself as a State within the international community. Once again, the national discourse was intertwined with the international one, manifested in the colonial space and in the ability of a State to have an 'extra-European' territory to which to extend its sovereignty. During the period in which Mancini was Minister of Foreign Affairs, he made significant contributions to Italian colonial expansion, most importantly, by formalising in Parliament Italy's acquisition of the bay of Assab in 1882⁶⁷. In fact, for Mancini the principle of nationality was only applicable to « civilised peoples ». Therefore, he denied that African peoples could have the status of nations, legitimising their subjugation⁶⁸. For Mancini the opening of the Suez Canal, to which Pierantoni made a significant

63 « Letter from J.C. Bluntschli to A. Pierantoni, 3rd January 1875 », *Museo Centrale del Risorgimento*, Roma, MCRR, Fondo Pierantoni, 869-58.

64 See for the Italian unification and codification : A. Aquarone, *L'unificazione legislativa e i codici del 1865*, Milano, Giuffrè, 1960 ; C. Ghisalberti, *Unità nazionale e unificazione giuridica in Italia : La codificazione del diritto nel risorgimento*, Firenze, Laterza, 1991 ; C. Ghisalberti, *La codificazione del diritto in Italia, 1865-1942*, Firenze, Laterza, 1985.

65 « Ma premio vero e desiato alle durate fatiche è lo attenere che gl'italiani concorrano operosi e zelanti alla riforma del diritto delle genti, alla cui scienza l'Italia serve e divisa potentemente lavorò, ed alla quale non deve fallire, libera e rinnovata » : A. Pierantoni, « La riforma del diritto delle genti e l'Istituto di diritto internazionale di Gand », *op. cit.*, p. 84.

66 « close its eyes to this generous contest, which is now manifesting itself among all the great nations of Europe » (author's translation) : P.S. Mancini, « Discorso pronunciato alla Camera dei Deputati, tornata del 27 gennaio 1885 », *Atti Parlamentari, Legislatura XV, Discussioni*, Roma, Tipografia Camera dei Deputati, 1886, p. 11068.

67 N. Papa, *L'Africa italiana : I giudici, le leggi, le pene e la questione della razza*, Milano, Aracne, 2009, p. 30. See also : L. Nuzzo, *Origini di una scienza*, *op. cit.*, p. 129 ; T. Scovazzi, *Assab, Massaua, Ucciali, Adua : gli strumenti giuridici del primo colonialismo italiano*, Torino, G. Giappichelli, 1998, p. 51.

68 P.S. Mancini, « Discorso pronunciato alla Camera dei Deputati, tornata del 27 gennaio 1885 », *Atti Parlamentari, Legislatura XV, Discussioni*, Roma, Tipografia Camera dei Deputati, 1886, p. 11086.

contribution during the negotiations for free movement in the canal, was decisive for including Italy in the European colonial discourse⁶⁹.

33. In his parliamentary speeches he stressed not only the duty, but in fact the need for Italy to participate in the mission of the peoples of Europe to bring help to the « uncivilised condition » of the African peoples

*Voi dovete pertanto convenire che siamo in presenza di un bisogno vero degli Stati moderni. Sarebbe dunque, nonché inglorioso, molto difficile che l'Italia, grande potenza, potesse non partecipare a questa, dirò così, generale e benemerita crociata della civiltà contro la barbarie*⁷⁰.

34. Whilst also adopting Mancini's colonialist positions, Pierantoni as a politician and international lawyer developed a legal discourse centred on the importance of creating institutions aimed at colonial training. At the parliamentary sitting of 17th July 1887, when the Depretis government arranged for the approval of a bill allocating twenty million lire for military expenditure at Massawa in Africa, Pierantoni firmly expressed his doubts as to the African conquest, the colonial struggles and the extensive military power that reigned in the African colonies⁷¹.

35. For a jurist-politician like Pierantoni, the real problem consisted in establishing actual control over the colonial possessions. He was firmly convinced that the military did not have the adequate means for this task. For him, military officers were technical men, destined since childhood to a military life (defined as « a life of duties, sacrifices, and discipline ») which was not linked with the commitment of carrying out the functions of government. « *Nelle colonie* – Pierantoni said – *occorre una larga libertà di azione, ci vuole una larga cognizione delle regole del governo, dell'arte diplomatica e della nostra legislazione* »⁷². From that point of view, it is understandable why Pierantoni was the founder of the first Italian Colonial and Diplomatic School, whose purpose was to educate and train young people in the exercise of diplomatic and consular functions in the Italian colonies. The need for a trained diplomatic corps would have been essential not only for colonial expansion but also for ensuring a correct emigration policy and

69 Mancini, during the Parliamentary Assembly of 30th June 1887 argued of the Suez Canal : « *L'importanza del Mar Rosso per l'Italia dopo il taglio dell'istmo di Suez, sia perché è alle porte del Mediterraneo, il cui equilibrio è nostro interesse mantenere, sia per essere la grande via di navigazione mondiale, in cui passano almeno tre quarti delle nostre comunicazioni marittime, non può essere messa in dubbio. [...] Le Camere di commercio italiane adunate in Congresso a Genova, mi pare nel 1869, con fervidi voti invitarono formalmente il governo a procurarci scali e punti d'approdo nel Mar Rosso, come situazione privilegiata e la più opportuna per il vantaggio delle nostre relazioni commerciali marittime. Lo stesso voto fu rinnovato più tardi dalle nostre Camere di Commercio riconvocate in Napoli* » : P.S. Mancini, « Discorso pronunciato alla Camera dei Deputati, tornata del 30 giugno 1887 », *Atti Parlamentari, Legislatura XV, Discussioni*, Roma, Tipografia Camera dei Deputati, 1887, p. 4297.

70 « You must therefore agree that this is a real need for modern States. It would therefore be not only inglorious, but very difficult if Italy, a great power, could not participate in this, let me say, general and meritorious crusade of civilisation against barbarism » (author's translation) : *ibidem*. See also concerning Italian colonisation and colonial law : P. Costa, « Il fardello della civilizzazione : Metamorfosi della sovranità nella giuscolonialistica italiana », *Quaderni fiorentini per la storia del pensiero giuridico moderno*, 33/1, p. 169 ; N. Labanca, *Oltremare : storia dell'espansione coloniale italiana*, Bologna, Il Mulino, 2007) ; Luciano Martone, *Diritto d'oltremare : legge e ordine per le colonie del regno d'Italia* (Milano, Giuffrè 2008). Also : C. Ghezzi, *Fonti e Problemi Della Politica Coloniale Italiana : Atti Del Convegno, Taormina-Messina, 23-29 Ottobre 1989*, Roma, Ministero per i beni culturali e ambientali, Ufficio centrale per i beni archivistici, 1996) ; M.L. Sagù, « Alle origini della scienza del diritto coloniale in Italia », *Clio*, 24/4, 1998, p. 579-586, here 557.

71 Pierantoni said concerning the colonisation of Africa and the participation of Italy : « *perché il secolo XIX sta continuando l'opera che il secolo XVIII aveva incominciato : la conquista del mondo da parte degli Europei. Di recente si avverò un fatto che nella storia del nostro continente si realizzò spesso alla vigilia delle grandi crisi sociali. Quando vi furono grandi guerre o grandi rivoluzioni, ed i popoli presero le armi, l'Europa, che rimediò subito con la pace, cercò al di fuori dei propri confini nuovi territori. [...] Le nazioni si precipitano come rappresentanti della civiltà sopra tutte le regioni che possono essere sfruttate. L'Europa presa da quella malattia che si dice febbre africana, esplora quel continente misterioso. I viaggiatori precedono i mercanti, i mercanti i soldati e questi i coloni. L'Italia, potenza marittima, doveva sempre rimanere chiusa nei suoi confini naturali senza una vita d'espansione, o iniziarne una modesta, ma proporzionata alla sua gioventù ?* » : A. Pierantoni, « Discorso pronunciato alla Camera dei Deputati », *Atti Parlamentari, Legislatura XV, Discussioni*, Roma, Tipografia Camera dei Deputati, 1887, p. 1564.

72 « In the colonies wide freedom of action is needed ; we need wide knowledge of the rules of government, of the art of diplomacy, and of our legislation » (author's translation) : *ibidem*.

the protection of the rights of the emigrants. In fact, it was Pierantoni himself, moved by the lack of adequate protection for emigrants⁷³, who took an active part in a series of legislative interventions aimed primarily at ensuring dignified travel conditions, extending the principle of territoriality in relation to national laws, and at defining the identification with certainty of Italian emigrants through comprehensive passport legislation⁷⁴.

36. It should be mentioned that the request for colonial education was part of a wider movement for renewal of the Italian educational system, which demanded adjustments to the new requirements generated by colonisation. The stimulus for the many-sided debate that took place in the Italian parliament was the publication by the *Institut Colonial International* of a small book dedicated to colonial teaching in the various European states, titled *L'enseignement colonial dans les pays européens*. Its author, Henry Froidevaux, described the many initiatives by governments and individuals in countries like Great Britain, Germany, France, Belgium and the Low Countries to introduce and consolidate teaching about colonial subjects within their national education systems⁷⁵. During the Zanardelli government, with Italy now in line with the other European states, Nunzio Nasi, the Minister of Education, speaking in the Chamber and then in the Senate sessions in May and June 1901 on the budget for Public Education, addressed the issue of colonial teaching. Giancarlo Monina has described what Nasi had in mind for the implementation of his plans: the Minister suggested the creation of special schools for emigration topics within a number of universities, entailing the establishment of tropical medicine professorships and courses in colonial legislation, medical and commercial geography and naval hygiene⁷⁶. In the following October, Nasi submitted to the Higher Council of Education a more detailed programme that provided for the establishment of new professorships, a project for transforming the *Economic and Administrative School* that was attached to the Faculty of Law in Rome into a *Colonial and Diplomatic School*, of which the founder and first director was none other than Augusto Pierantoni. The Royal Decree of 1901 sanctioned its creation and began preparing aspiring Foreign Ministry employees for careers and promoting the general dissemination of the disciplinary knowledge relating to emigration as its objectives⁷⁷.

37. The two-year curriculum included courses in migration and settlement policy, political and colonial geography, diplomatic law, trade policy and comparative customs law. Pierantoni himself taught the

73 In 1901 during a session of the Senate discussing the necessity of a clear and comprehensive law concerning emigration, Pierantoni stated: « Nella stazione di Genova tante volte vidi adunate in carovana emigrante le nostre classi operaie ed agricole giacere sul nudo sasso, dormendo sotto i portici, sotto gli alberi nella piazza dove sorge la statua di Cristoforo Colombo, aspettando l'agente di emigrazione e l'ora dell'imbarco. Quel triste spettacolo mi premeva il cor »: A. Pierantoni, « Discorso pronunciato alla Camera dei Senatori, tornata del 24 gennaio 1901 », *Atti parlamentari della Camera dei Senatori discussioni*, Roma, Forzani, 1902, p. 867-869.

74 With the so called Crispi Law of 30th December 1888 no. 5866, the Kingdom of Italy dealt with the complex topic of Italian emigration, legally analysing the issues related to the types of emigrants allowed to expatriate and regulating, for the first time in an comprehensive way, many of the different aspects of the migratory flows. In subsequent years a complex political debate took place that saw, among many protagonists, Luigi Luttazzi and Edoardo Pantano as well as Pierantoni. The discussions in Parliament entered into the law of 31st January 1901 no. 23. This law codified and regulated emigrants' rights, ensuring effective measures of protection. On the legal basis of article 7 the General Commissariat for Emigration, operating under the control of the Ministry of Foreign affairs, was instituted. The General Commissariat for Emigration incorporated all instances related to migratory issues, which were before divided among different public institutions. The law, as declared in article 13, abolished the figure of the Shipping Company Agent and replaced it with the Representative of the Carriers. An Inspectorial Commission was established with the authority to check that all ships fulfilled the legal requirements, in order to guarantee better travelling conditions, in the main Italian harbours such as Naples, Genoa and Palermo. At the same time, for the whole duration of travel, special commissioners were charged to check that adequate space for the migrants was guaranteed. Furthermore, regarding the identification of Italian emigrants, the Royal Ordinance no. 36 of 1901 dictated the first organic regulation of the use of passports. D. Freda, « La regolamentazione dell'emigrazione in Italia tra Otto e Novecento: una ricerca in corso », *Historia et ius*, 7, 2014, paper 6 <http://www.historiaetius.eu/uploads/5/9/4/8/5948821/freda_6.pdf>. See for the efforts of Pierantoni concerning the legal protection of migrants: A. Breccia, « Pedagogie della nuova cittadinanza. L'avvio dell'esperienza accademica e parlamentare di Augusto Pierantoni », *Cittadinanze nella storia dello Stato contemporaneo*, eds. M. Aglietti and C. Calabrò, Milano, 2017, p. 47-61. Also: A. Pierantoni, « La legge per la emigrazione nei suoi rapporti col servizio militare e con la cittadinanza », *L'Italia coloniale*, 8, 1901, p. 40.

75 H. Froidevaux, *L'enseignement colonial dans les pays européens*, Bruxelles, Mertens 1901.

history and law of treaties⁷⁸. However, the Royal School was not favourably received, above all by the heated colonial exponents who saw in it « an ancient reminiscence of Italian school legislation ». Four years later, on 24th November 1905, the school was closed and replaced by the *Higher Institute for Commercial and Colonial Studies*. But despite its short life, it can be said that the *Colonial and Diplomatic School* was a significant forerunner of the subsequent Faculty of Political Science of the University of Rome⁷⁹.

VI. Conclusion

38. The different shapes of international law in the context of the Italian peninsula during the nineteenth century were created by the continuous and incessant dialogue between Italian jurists and the jurists of the other European states. This dialogue became gradually established as a result of the creation of *ad hoc* institutions like the *Institut de Droit International* which enabled ideas to circulate and to be assimilated within the individual national contexts by sharing common values.

39. In the universities, which are places and spaces devoted to the formation of knowledge, the legal discourse unfolded through textbooks and translations, between the national and the international, the universal and the particular. International law was shaped within the creation of Italian unity, adapting to its particular social, cultural, and political circumstances. The principle of nationality, developed by Pasquale Stanislao Mancini and based on the awareness of nationality, became « *un titolo giuridico, forma attraverso la quale leggere e costruire giuridicamente i concetti di autodeterminazione e sovranità politica* »⁸⁰. Constructed on the basis of a return to the historical origins of Italian international law and on comparative public law, the international language enabled the national experience to be strengthened and around it was built a solid base for international relations. The long process of Italian national codification also involved attempts to codify the law of nations, as we have seen with Pierantoni's translation of Field's *Draft Outlines of an International Code*. The *Colonial and Diplomatic School* was a response to the internationalisation process of the colonies, in which Italy also participated. Therefore, the formation of a diplomatic corps, capable of responding both to Italian colonial aims and to the issues associated with emigration, was also a strategy by means of which Italy was able to enter the wider European political context.

40. The history of the rise of the international law is part of a continuous, intense and incessant work of interconnection between States, diplomats, individual jurists and the transactional institutes that emerged during the nineteenth century. Inevitably, it created different spaces for international comparison and favoured a shift of attention towards the peculiarities of certain cultures and legal traditions that were present in a specific State and social context, in our case Italy. Beginning from the second half of the nineteenth century the rapid rise of Italian international law is similar to a prism with innumerable facets that breaks down into multiple and contradictory legal interweaving. It reflected the dynamic reality of law according to which it was generated and constructed from time to time and took on particular values and content depending on the context, the space and the time.

76 G. Monina, *Il Consenso coloniale : le Società geografiche e l'Istituto coloniale italiano, (1896-1914)*, Roma, Carocci, 2002, p. 59.

77 *Ibid.*, p. 91.

78 See the Manifesto of the School proclaimed by Pierantoni : A. Pierantoni, *Origini e fini della scuola diplomatico-coloniale : discorso inaugurale pronunciato dal prof. Augusto Pierantoni il 7 aprile 1902*, Roma, Tip. cooperativa sociale, 1902.

79 M. Caravale, « Per una storia delle facoltà di Scienze politiche in Italia : il caso di Roma », *Le carte e la storia*, 2/1, 1995, p. 17-28, here 17.

80 « a legal title, a format through which to legally read and construct the concepts of self-determination and political sovereignty » (author's translation) : L. Nuzzo, *Origini di una scienza, op. cit.*, p. 92.

Elisabetta FIOCCHI MALASPINA

Assistant Professor of Legal History, Faculty of Law, University of Zurich

elisabetta.focchi@rwi.uzh.ch.